

February 28, 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXASBY: Michael Trujillo  
DEPUTY**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION****ROBERT K. HUDNALL**  
**Plaintiff****v.****STATE OF TEXAS, CITY OF EL PASO,  
TEXAS, JUDGE SERGIO ENRIQUEZ  
ALEJANDRO C. RAMIREZ, TYRONE SMITH,  
DBA SMITH AND RAMIREZ RESTORATION  
LLC, GUY BLUFF, AMERICAN ARBITRATION  
ASSOCIATION AND EVANSTON INSURANCE  
COMPANY**  
**Defendants****Case No. 3:22-cv-00036-KC****MOTION FOR DECLARATORY JUDGMENT**

Comes now the Plaintiff in the above styled action and makes this, his Motion for a Declaratory Judgment, showing this court as follows:

1. Under the Provisions of Federal Rules of Civil Procedure, Rule 57, a declaratory judgment is appropriate when it will terminate the controversy giving rise to the proceeding.
2. The elements of a Declaratory Judgment are as follows:
  - Disputes to be definite and concrete,
  - Touching on the legal relation of the parties having adverse legal interests,
  - Real and substantial
  - Admit of specific relief through a decree of a conclusive nature.
3. The Defendants, Alejandro C. Ramirez and Tyrone Smith, dba as Smith and Ramirez Restoration LLC (hereinafter Roofers) contracted to install a roof for Plaintiff. The installation was not proper and failed to meet code, but the Roofers were still paid 125% of their invoice. They wanted still more.

4. Their own surety company, Old Republic Surety Company sued Plaintiff in County Court of Law #3, a court of competent jurisdiction asking to forfeit the surety bond as the work did not meet code. Also included was an allegation that the inspection conducted by the city of El Paso was performed from the desk of the inspector and was not a physical inspection.
5. Defendant Roofers filed an intervenor, and their attorney took part in the hearing. He never denied the roof failed to meet code and did not deny that the inspection was done from the inspector's desktop and was not a physical inspection.
6. The County Court of Law #3 issued a final order that the bond be forfeited. At that point, the contract between Plaintiff and Defendant roofers was void as they were no longer covered by a surety bond as required by City ordinance.
7. Additionally, the City of El Paso's Department of Planning and Inspections conducted an actual physical inspection and found that the roof did not meet code. A later letter (submitted by Plaintiff in his original petition,) superseded the desktop pass issued at the behest of the Defendant Roofers.
8. Under the legal principles of Res Judicata and Collateral Estoppel, the decision of the County Court of Law #3 answered for all time that the roof in question failed to meet code.
9. In spite of the final decision of the County Court of Law #3 and the letters issued by the City of El Paso's Department of Planning and Inspection confirming that the roofer failed to meet code (all of which were included in Plaintiff's original petition) and the document attached as Exhibit A issued by a firm that does roof inspections for a federal agency Defendant Roofers and their numerous attorneys have continued to claim that the roof did

passed and have kept litigation going for almost 8 years in order to be unjustly enriched at Plaintiff's expense.

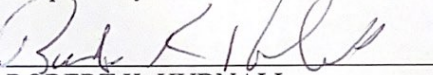
10. A Declaratory judgment that the roof did in fact fail to meet code would terminate the controversy as it would end the continual attempts by Defendant Roofers to be unjustly enriched at Plaintiff's expense.

11. Based upon the evidence that Plaintiff has submitted, there is no support for Defendant Roofer's premise that the roof passed inspection – therefore, Plaintiff is entitled to a declaratory judgment that the roof failed to pass inspection and failed to meet code.

12. Plaintiff would show that he has filed numerous motions that the Court has seen fit to ignore, to include one based on Judgment on the Pleadings wherein he showed that there is no legal basis for their contention that the roof passed inspection and met local code. He has also asked for numerous hearings and been ignored.

THEREFORE, based on the foregoing, Plaintiff does ask this Court to issue a Declaratory Judgment that the roof in question failed meet local code as found by the County Court of Law #3, a Court of Competent Jurisdiction, and the City of El Paso's Department of Planning and Inspection and the Independent Inspection firm's report attached or give him leave to appeal the issue to the 5<sup>th</sup> Circuit based on the continuing violation of his right to due process of law and denial of meaningful access to the Court.

Respectfully submitted,

  
ROBERT K. HUDNALL  
915-478-1114

**CERIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I, Robert K. Hudnall, do hereby certify that a true and correct copy of the above Motion for Declaratory Judgment was served on each defendant through their attorneys via email on this 28<sup>th</sup> day of February 2022. The served attorneys are:

Defendants State of Texas and Judge Sergio Enriquez  
Scot M. Graydon  
[Scot.Graydon@oag.texas.gov](mailto:Scot.Graydon@oag.texas.gov)

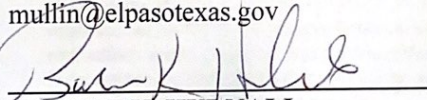
Defendants Guy Bluff and AAA  
Raymond D. Martinez  
[raymond@martinezlawyers.com](mailto:raymond@martinezlawyers.com)

Defendant Evanston Insurance Company  
Stephen Melendi  
[stephenm@tbmmlaw.com](mailto:stephenm@tbmmlaw.com)

Defendant Alejandro C. Ramirez  
James A. Martinez  
[martinez@jmeplaw.com](mailto:martinez@jmeplaw.com)

Defendant Tyrone Smith  
James A. Martinez  
[martinez@jmeplaw.com](mailto:martinez@jmeplaw.com)

Defendant City of El Paso  
Karla M. Nieman, City Attorney c/o Abbie Mullin Assistant City Attorney  
[mullin@elpasotexas.gov](mailto:mullin@elpasotexas.gov)

  
**ROBERT K. HUDNALL**

Report Identification \_\_\_\_\_

Timothy A. Sank, 915-346-9553, timsproinspection@sbcglobal.net

I=Inspected NI=Not Inspected NP=Not Present D=Deficient

I NI NP D

## PROPERTY INSPECTION REPORT

Robert Hudnall

2/14/22

Name of Client

Date of Inspection

297 Puesta Del Sol, El Paso TX 79912

Address of Inspected Property

TIMOTHY ALAN SANK

**7144**

Name of Inspector

TREC License #

### PURPOSE OF INSPECTION

A real estate inspection is a visual survey of a structure and a basic performance evaluation of the systems and components of a building. It provides information regarding the general condition of a residence at the time the inspection was conducted. *It is important* that you carefully read ALL of this information. Ask the inspector to clarify any items or comments that are unclear.

### RESPONSIBILITY OF THE INSPECTOR

This inspection is governed by the Texas Real Estate Commission (TREC) Standards of Practice (SOPs), which dictates the minimum requirements for a real estate inspection.

The inspector IS required to:

- use this Property Inspection Report form for the inspection;
- inspect only those components and conditions that are present, visible, and accessible at the time of the inspection;
- indicate whether each item was inspected, not inspected, or not present;
- indicate an item as Deficient (D) if a condition exists that adversely and materially affects the performance of a system or component **OR** constitutes a hazard to life, limb or property as specified by the SOPs; and
- explain the inspector's findings in the corresponding section in the body of the report form.

The inspector IS NOT required to:

- identify all potential hazards;
- turn on decommissioned equipment, systems, utilities, or apply an open flame or light a pilot to operate any appliance;
- climb over obstacles, move furnishings or stored items;
- prioritize or emphasize the importance of one deficiency over another;
- provide follow-up services to verify that proper repairs have been made; or
- inspect system or component listed under the optional section of the SOPs (22 TAC 535.233).

### RESPONSIBILITY OF THE CLIENT

While items identified as Deficient (D) in an inspection report DO NOT obligate any party to make repairs or take other actions, in the event that any further evaluations are needed, it is the responsibility of the client to obtain further evaluations and/or cost estimates from qualified service professionals regarding any items reported as Deficient (D). It is recommended that any further evaluations and/or cost estimates take place prior to the expiration of any contractual time limitations, such as option periods.

**Please Note:** Evaluations performed by service professionals in response to items reported as Deficient (D) on the report may lead to the discovery of additional deficiencies that were not present, visible, or accessible at the time of the inspection. Any repairs made after the date of the inspection may render information contained in this report obsolete or invalid.

### REPORT LIMITATIONS

This report is provided for the benefit of the named client and is based on observations made by the named inspector on the date the inspection was performed (indicated above).

ONLY those items specifically noted as being inspected on the report were inspected.

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This inspection IS NOT:

- a technically exhaustive inspection of the structure, its systems, or its components and may not reveal all deficiencies;
- an inspection to verify compliance with any building codes;
- an inspection to verify compliance with manufacturer's installation instructions for any system or component

and

DOES NOT imply insurability or warrantability of the structure or its Components.

**NOTICE CONCERNING HAZARDOUS CONDITIONS, DEFICIENCIES, AND CONTRACTUAL AGREEMENTS**

**Conditions may be present in your home that did not violate building codes or common practices in effect when the home was constructed but are considered hazardous by today's standards. Such conditions that were part of the home prior to the adoption of any current codes prohibiting them may not be required to be updated to meet current code requirements. However, if it can be reasonably determined that they are present at the time of the inspection, the potential for injury or property loss from these conditions is significant enough to require inspectors to report them as Deficient (D). Examples of such hazardous conditions include:**

- malfunctioning, improperly installed, or missing ground fault circuit protection (GFCI) devices and arc-fault (AFCI) devices;
- ordinary glass in locations where modern construction techniques call for safety glass;
- malfunctioning or lack of fire safety features such as smoke alarms, fire-rated doors in certain locations, and functional emergency escape and rescue openings in bedrooms;
- malfunctioning carbon monoxide alarms;
- excessive spacing between balusters on stairways and porches;
- improperly installed appliances;
- improperly installed or defective safety devices;
- lack of electrical bonding and grounding; and
- lack of bonding on gas piping, including corrugated stainless steel tubing (CSST).

Please Note: items identified as Deficient (D) in an inspection report DO NOT obligate any party to make repairs or take other actions. The decision to correct a hazard or any deficiency identified in an inspection report is left up to the parties to the contract for the sale or purchase of the home.

This property inspection report may include an inspection agreement (contract), addenda, and other information related to property conditions.

INFORMATION INCLUDED UNDER "ADDITIONAL INFORMATION PROVIDED BY INSPECTOR", OR PROVIDED AS AN ATTACHMENT WITH THE STANDARD FORM, IS NOT REQUIRED BY THE COMMISSION AND MAY CONTAIN CONTRACTUAL TERMS BETWEEN THE INSPECTOR AND YOU, AS THE CLIENT. THE COMMISSION DOES NOT REGULATE CONTRACTUAL TERMS BETWEEN PARTIES. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY CONTRACTUAL TERM CONTAINED IN THIS SECTION OR ANY ATTACHMENTS, CONSULT AN ATTORNEY.

**ADDITIONAL INFORMATION PROVIDED BY INSPECTOR**

Start Time of Inspection 9:00 AM, PM, End Time 9:57 AM, PM

Temp. 60 Weather Cloudy X Clear, Raining, Other

Un-Occupied at the time of Inspection, X Occupied, (when home is occupied no furniture is moved, some areas cannot be seen or inspected)

Charge \$ 250.00 Payment Method: Check # 3323, 3324, Cash/Cash App Yes, No, Card Yes, Paid X Yes, No, Zelle PO#

No warranty, condition of the house on date of inspection. Claims limited to amount of inspection charge.

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## I. STRUCTURAL SYSTEMS

### ☐ ☒ ☐ ☐ A. Foundations

Type of Foundation(s): \_\_\_ Slab-on-grade, \_\_\_ Pier and Beam,  
\_\_\_ Monolithic Slab, \_\_\_ Other

Comments: Functioning as intended.

Craw space accessible? \_\_\_ Yes, \_\_\_ No, \_\_\_ N/A

Method used to inspect craw space: \_\_\_\_\_

### ☐ ☒ ☐ ☐ B. Grading & Drainage

Comments:

### ☐ ☐ ☐ ☒ C. Roof Covering Materials

Types of Roof Covering: \_\_\_ 3-Tab/ \_\_\_ 20 year or \_\_\_ 30 year, \_\_\_ 90#  
Rolled, \_\_\_ Wood/Cedar, \_\_\_ Tile, \_\_\_ Slate, \_\_\_ Metal, \_\_\_ T-Loc, \_\_\_  
Built-Up,

\_\_\_ Other \_\_\_ (Plastic Roof Covering) \_\_\_\_\_

Viewed From: \_\_\_ x \_\_\_ on Roof, \_\_\_ Ground, \_\_\_ Other \_\_\_\_\_

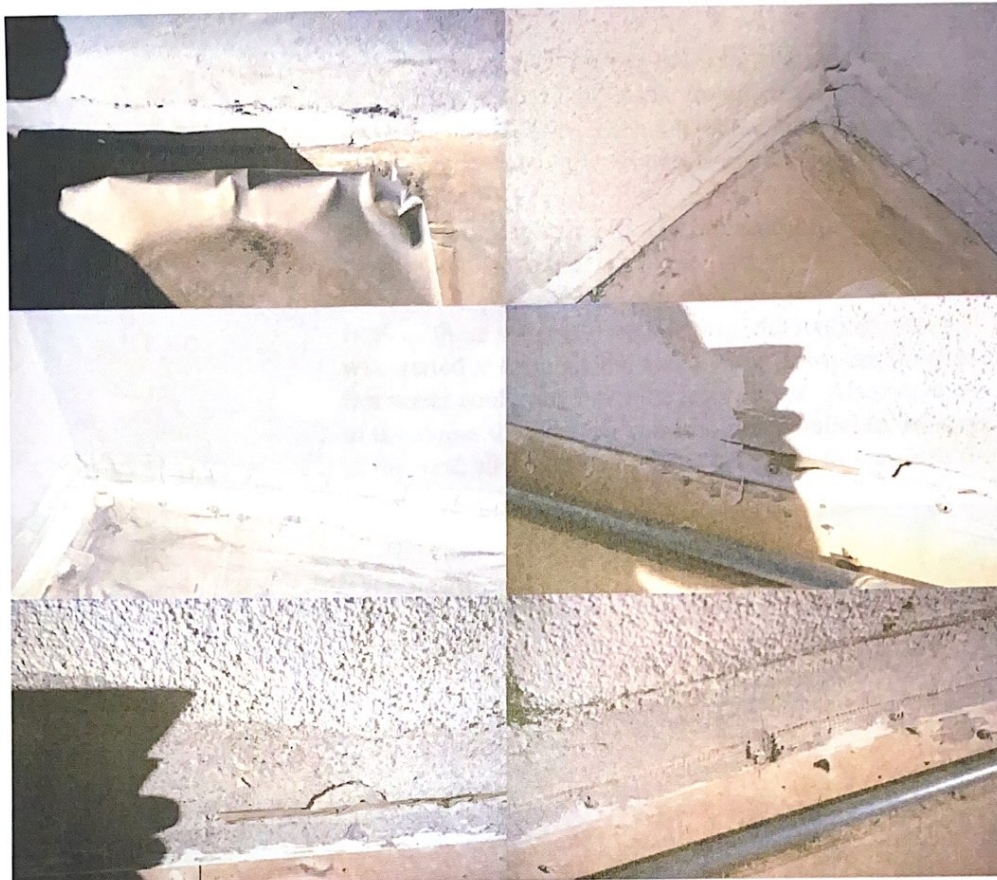
Comments: 1. Damage and/or gaps around the edge flashing on the  
walls is allowing water into the wall system.

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2. Old roofing was not removed before new roofing material was installed.



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3. Standard roofing instillation was not followed:

A. Roofing material should be installed starting at the low end of the roof. Then, each additional layer is installed higher on the roof and will then drain on to the lower material.

B. The roofing material should run accost the (perpendicular) to the roof slope.

Both of these standard was not used, the roofing material was started at the high end and layered down the slope so that water could run under the lower layer. Also, on some of the slopes the material was installed parallel to the slope of the roof, allowing water under the edges to seep into the house.



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3. Vent pipes and Air vents were covered over, trapping moisture in the house.



4. Very poor workmanship, sloppy.



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Evidence of Previous Repairs ☒ Yes, ☐ No, ☐ N/A

☐ ☒ ☐ ☐

**D. Roof Structure and Attic**

Viewed From: ☐ On Roof, ☐ Inside Attic, ☐ No attic available

Approximate Average Depth of Insulation: ☐ inches.

Approximate Average Thickness of Vertical Insulation: ☐ inches,  
☐ N/A

Comments:

Proper Ventilation of roof and attic ☐ Yes, ☐ No

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☐ ☒ ☐ ☐ **E. Walls (Interior and Exterior)**

Comments:

☐ ☒ ☐ ☐ **F. Ceilings and Floors**

Comments:

☐ ☒ ☐ ☐ **G. Doors (Interior and Exterior)**

Comments:

☐ ☒ ☐ ☐ **H. Windows**

Comments:

Missing or Damaged Screens \_\_\_ Yes, \_\_\_ No

Functional Emergency Openings in Bedrooms \_\_\_ Yes, \_\_\_ No

☐ ☒ ☐ ☐ **I. Stairways (Interior and Exterior)**

Comments:

☐ ☒ ☐ ☐ **J. Fireplace/Chimney**

Comments:

Gas Log Only \_\_\_ Yes, \_\_\_ No, \_\_\_ N/A

☐ ☒ ☐ ☐ **K. Porches, Balconies, Decks and Carports**

Comments:

☐ ☒ ☐ ☐ **L. Other \_\_\_\_\_**

Comments:

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## II. ELECTRICAL SYSTEMS

### ☐ ☒ ☐ ☐ A. Service Entrance and Panels

Comments:

AFCI present: \_\_\_\_ Yes, \_\_\_\_ No (Arc Fault Circuit Interrupter, used for fire protection)

Service From: \_\_\_\_ Overhead, \_\_\_\_ Underground

Visible wiring type: Service: \_\_\_\_ Copper, \_\_\_\_ Aluminum

Feeders: \_\_\_\_ Copper, \_\_\_\_ Aluminum

Appropriate connections? \_\_\_\_ Yes, \_\_\_\_ No

### ☐ ☒ ☐ ☐ B. Branch Circuits, Connected Devices and Fixtures

Type of Wiring: \_\_\_\_ Copper, \_\_\_\_ Aluminum, \_\_\_\_ Other

Comments:

GFCI Lacking in: \_\_\_\_ Bathrooms, \_\_\_\_ Kitchen, \_\_\_\_ Garage, \_\_\_\_ Outside,

\_\_\_\_ Basement/Craw Space, \_\_\_\_ Laundry/Utility, \_\_\_\_ Wet Bar. (Ground Fault Circuit Interrupter, for shock protection)

Smoke Alarms:

Working, \_\_\_\_ Yes, \_\_\_\_ No

Present in All Bedrooms, \_\_\_\_ Yes, \_\_\_\_ No

Present outside Bedrooms, \_\_\_\_ Yes, \_\_\_\_ No

Present on other floors, \_\_\_\_ Yes, \_\_\_\_ No, \_\_\_\_ N/A

### ☐ ☒ ☐ ☐ C. Other \_\_\_\_\_

Comments:

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### III. HEATING, VENTILATION AND AIR CONDITIONING SYSTEMS

☐ ☒ ☐ ☐

#### A. Heating Equipment

Type of System: \_\_\_\_\_ Forced air, \_\_\_\_\_ Wall Units, \_\_\_\_\_ Base board, \_\_\_\_\_ other

Energy Source: \_\_\_\_\_ natural gas, \_\_\_\_\_ Electric, \_\_\_\_\_ other

Comments:

\_\_\_\_\_ There is rust inside the heat exchange, have unit checked by an HVAC company for CO leaks.

\_\_\_\_\_ The unit was not on at the time of inspection could not check operation.

☐ ☒ ☐ ☐

#### B. Cooling Equipment:

Type of System: \_\_\_\_\_ Evaporative Cooler,  
\_\_\_\_\_ One Speed, \_\_\_\_\_ Two Speeds  
\_\_\_\_\_ Copper, \_\_\_\_\_ Plastic (Water Line)  
\_\_\_\_\_ Refrigerated Air  
\_\_\_\_\_ Other

Comments:

\_\_\_\_\_ The unit was not on at the time of inspection could not check operation.

\_\_\_\_\_ Winterized

☐ ☒ ☐ ☐

#### C. Duct System, Chases, and Vents

Comments:

☐ ☒ ☐ ☐

#### D. Other \_\_\_\_\_

Comments:

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#### IV. PLUMBING SYSTEM

☐ ☒ ☐ ☐

##### A. Plumbing Supply, Distribution System and Fixtures

Location of water meter: \_\_\_ Street, \_\_\_ Front of House, \_\_\_ Back of House,

\_\_\_ Side of House, \_\_\_ Allie, \_\_\_ Other

Location of main water supply valve: \_\_\_ Water Meter, \_\_\_ In House, \_\_\_

Garage

Static water pressure reading: \_\_\_\_\_ PSI

\_\_\_ Less Than 40, \_\_\_ Greater Than 80

Type of Supply piping material: \_\_\_ Copper, \_\_\_ CPVC, \_\_\_ Plastic,

\_\_\_ Other

Comments: \_\_\_\_\_

☐ ☒ ☐ ☐

##### B. Drains, Wastes, Vents

Type of Drain piping Material: \_\_\_ PVC, \_\_\_ Copper, \_\_\_ Metal, \_\_\_

Other

Comments: \_\_\_\_\_

☐ ☒ ☐ ☐

##### C. Water Heating Equipment

Energy Source: \_\_\_ Natural Gas, \_\_\_ LP Gas, \_\_\_ Electric, \_\_\_ Other

Capacity: \_\_\_ 20, \_\_\_ 30, \_\_\_ 40, \_\_\_ 50, \_\_\_ Other (Gallons)

Comments: \_\_\_\_\_

T & P Valve working \_\_\_ Yes, \_\_\_ No (Temperature and Pressure Relief Valve)

\_\_\_ Gas shut off type (Watts 210)

☐ ☒ ☐ ☐

##### D. Hydro-Massage Therapy Equipment

Comments: \_\_\_\_\_

☐ ☒ ☐ ☐

##### E. Gas Distribution Systems and Gas Appliances

Location of gas meter: \_\_\_ Front, \_\_\_ Right side, \_\_\_ Left side, \_\_\_

Back yard, \_\_\_ Other \_\_\_\_\_

Type of gas distribution piping material: \_\_\_ Black Pipe, \_\_\_ Flex/ CST,

\_\_\_ Other

Comments: \_\_\_\_\_

☐ ☒ ☐ ☐

##### F. Other \_\_\_\_\_

Comments: \_\_\_\_\_

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## V. APPLIANCES

☐ ☒ ☐ ☐ **A. Dishwashers**  
*Comments:*

☐ ☒ ☐ ☐ **B. Food Waste Disposers**  
*Comments:*

☐ ☒ ☐ ☐ **C. Range Hood and Exhaust Systems**  
*Comments:*

\_\_\_\_ Built into Microwave Oven

☐ ☒ ☐ ☐ **D. Ranges, Cooktops, and Ovens**  
\_\_\_\_ Natural Gas, \_\_\_\_ LP Gas, \_\_\_\_ Electric  
\_\_\_\_ Tip Protection \_\_\_\_ Yes, \_\_\_\_ No, \_\_\_\_ N/A  
350° test of Oven = \_\_\_\_, Pass \_\_\_\_, Fail \_\_\_\_  
*Comments:*

☐ ☒ ☐ ☐ **E. Microwave Oven**  
*Comments:*

☐ ☒ ☐ ☐ **F. Mechanical Exhaust Vents and Bathroom Heaters**  
*Comments:*

\_\_\_\_ Fan present, Operating \_\_\_\_ Yes, \_\_\_\_ No

\_\_\_\_ Heater present, Operating \_\_\_\_ Yes, \_\_\_\_ No